

**OLD KING'S HIGHWAY REGIONAL HISTORIC DISTRICT
COMMISSION**

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Eugene and Christine Bartley, Appellants

Vs.

Decision for Appeal No. 2011-8

**Old King's Highway Regional Historic
District Committee for the Town of Dennis**

On Tuesday, September 6, 2011 at 1:30 P.M., the Commission held a hearing at the West Barnstable Fire Station Meeting Room, 2160 Meeting House Way (Route 149), West Barnstable, Massachusetts, on Appeal # 2011-8 filed by Eugene and Christine Bartley seeking reversal of the Dennis Historic District Committee's granting of a Certificate of Appropriateness to the New Welch Realty Trust for the construction of a house to be located at 9 Mark Way, Dennis, Massachusetts.

Present were Chairman Peter T. Lomenzo, Jr., Dennis; Lawrence Houghton, Brewster; William Collins, Sandwich; George Jessop, Barnstable; James R. Wilson, Commission Administrative Counsel; Christine Bartley, Appellant; Donald P. Quinn, Attorney and Trustee of the New Welch Realty Trust, Applicant; Richard Welch, Trustee and Beneficiary of the New Welch Realty Trust, Applicant; Danielle Justo, Applicant's Attorney; Robin W. Wilcox, Applicant's Professional Land Surveyor; and Robert A. Landry, Sr., Applicant's Designer and Builder.

Absent were Paul Leach, Orleans and Richard Gegenwarth, Yarmouth.

The Dennis Town Committee's decision was filed with the Town Clerk on July 27, 2011. The appeal was entered with the Commission on August 5, 2011, within the 10-day appeal period.

Copies of the Appeal Petition, Town's Decision, Application, Plans and Minutes from the Town Committee's hearing were distributed to the Commissioners for review.

Applicant's Presentation:

Attorney Donald P. Quinn of Plymouth addressed the Commission on behalf of the Applicant's Application. He reviewed the four-year history of the project's permitting process and pointed out that in 2007 the Dennis Town Committee had approved the proposed house with attached garage and issued a Certificate of Appropriateness.

He indicated that following the issuance of the 2007 Certificate of Appropriateness, the project had been slightly modified by the four (4) year permitting process and that the pending Application was the final step for bringing closure to a Dennis Zoning Board of Appeals Land Court Case and Settlement Agreement involving an abutter to the West,

Robert D. Ewing, et ux., and the Applicant. He stated that the Settlement Agreement required the Applicant to change the location of the house by moving it twelve and a half (12.5) feet to the East and eleven (11) feet back from Cape Cod Bay. In addition, he indicated that the project included a patio, deck and swimming pool, which had been shown on the revised plans that had been submitted to the Dennis Town Committee and were incorporated into the Certificate of Appropriateness.

He asked Robin Wilcox, to describe the proposed modified project that had been approved by the Dennis Town Committee on July 27, 2011.

Mr. Wilcox showed an aerial photograph of the site to the Commissioners. He pointed out the location of the proposed dwelling and identified the Appellant's dwelling and other nearby dwellings and relevant features of the neighborhood. He suggested that it appeared that the style or design features of the proposed building were not being contested, but that the size and location of the proposed dwelling were the main source of the Appellant's objection to the project.

He presented a comparison of the size and location features of the abutting properties that indicated that the proposed dwelling would be the smallest in the neighborhood. The comparison showed the proposed dwelling as having a footprint of 2,441.11 square feet with a lot coverage of 8.47 %; the Ewing dwelling, located approximately fifty-one (51) feet to the West, having a footprint of 2,801.26 square feet with a lot coverage of 7.44%; the Ward dwelling, located approximately eighty-nine (89) feet to the South, having a footprint of 3,389.62 square feet with a lot coverage of 13.57%; and the Bartley dwelling (Appellants) approximately eighty-three (83) to the East having a footprint of 3,629.00 square feet with a lot coverage of 7.78 %.

He described the easterly sideline of the Applicant's lot as being bounded by the westerly half of Mark Way, a third party owned "paper street" with a stairway to the beach owned and maintained by the Nohscusett Property Owners Association, all as shown on the Applicant's submitted plans.

Attorney Quinn concluded the presentation by stating that the Welch family had owned the subject property since prior to 1950.

Commissioner Jessop of Barnstable asked if the Bartleys were an abutter.

Mr. Wilcox indicated that they were the owner of the easterly half of Mark Way and technically would be classified as an abutter to an abutter.

The Appellant's Presentation:

Christine Bartley stated that she attended the July 13, 2011 public hearing before the Dennis Town Committee and objected to the proposed dwelling because of its massiveness. She indicated that the footprint of the proposed building is fifty-nine (59) feet wide by sixty-five (65) feet long. She described the proposed dwelling as being too

large for a lot that is only one hundred (100) feet wide. She expressed the opinion that the proposed dwelling would be too close to the road and suggested that its size ought to be reduced.

She reported that only two of the Dennis Town Committee members attended a formal site visit and identified them as being the members that voted against the project.

She pointed out that her dwelling was located on a double lot and claimed that the Applicant's lot was too small and narrow for the proposed dwelling.

The Town Committee's Presentation:

Peter Lomenzo addressed the Commission in support of the Dennis Town Committee decision to approve the proposed dwelling. He confirmed that the Town Committee had issued a Certificate of Appropriateness in 2007 for the project. He reported that the Certificate had expired and that the Applicant had submitted a new application for the revised plans with the dwellings modified location.

He indicated that the Dennis Town Committee heard the Appellant's objections to the size and location of the proposed dwelling, but that a majority of the Town Committee voted (3-2) in favor of granting the Certificate of Appropriateness.

He reported that the Dennis Town Committee improved the appearance of the setting by requiring the removal of a proposed stockade fence and replacing it with suitable vegetation.

Mr. Lomenzo concluded his presentation by expressing the opinion that the Dennis Town Committee was very thorough in its review of the project and did not appear to have exceeded its authority; exercise poor judgment; or arbitrary, capricious, or erroneous in the granting of the Certificate of Appropriateness.

Public Comment:

Acting Chairman Houghton asked for public comment on the appeal and no one asked to speak.

Commissioner's Questions:

Mr. Collins of Sandwich asked if the variance granted to the project was for the size, height or sideline setbacks.

Attorney Quinn indicated that the variance applied to time extensions of the building permit.

He went on to claim that the original building permit had not lapsed and therefore the original Certificate of Appropriateness was still in effect and that the application ought to

be classified as a modification and not the issuance of a new Certificate of Appropriateness.

Mr. Jessop asked for a clarification of the Dennis Zoning setback distance.

Mr. Wilcox indicated that the Zoning sideline set back was five (5) feet and the proposed dwelling was fifteen (15) feet.

Acting Chairman Houghton asked Mr. Lomenzo if the Dennis Town Committee membership had changed since 2007.

Mr. Lomenzo stated that three of the members were new and two had acted on the first application in 2007. He indicated that the current decision was treated as a new application with a full review and consideration of all the projects features. He reaffirmed that the procedure was to hold a full public hearing with notice to abutters and not follow the less form amendment procedure.

Mr. Houghton asked if the three members that had not attended the formal site visit were sufficiently familiar with the property to render a proper determination.

Mr. Lomenzo stated that when the final vote was taken, all of the members reflected a clear understanding of the appearance and condition of the proposed site.

Applicant's Rebuttal:

Attorney Quinn reaffirmed Mr. Lomenzo's claim that the Dennis Town Committee was very thorough in its review of the project and did not exceeded its authority or exercise poor judgment. He reconfirmed that the action in approving the project was not arbitrary, capricious, or erroneous.

He pointed out that the site had been thoroughly studied and the location of the proposed dwelling was the result extensive review and compromise.

Appellant's Rebuttal:

Mrs. Bartley stated that she only requests that the Applicant make the proposed dwelling a little narrower.

Town Committee Rebuttal:

Mr. Lomenzo stated that the Dennis Town Committee should be upheld in its action. He again affirmed that the Applicant applied for a new Certificate of Appropriateness and the procedure and action taken by the Dennis Town Committee was not an amendment to the 2007 Certificate of Appropriateness.

Commission Discussion:

William Collins of Sandwich began the discussion by stating that in reviewing the Minutes, viewing the property and observing the presentation by the parties that it did appear to come down to the size and location of the proposed building. He indicated that the Dennis Town Committee had the authority to deal with the size and location of the proposed dwelling. He observed that the Dennis Town Committee appeared to discuss and consider the size and position of the proposed building in a thorough and open manner and that the Town Committee did not appear to act in an arbitrary or capricious manner nor did it appear to exercise poor judgment or error in approving the project. He suggested that the split vote reflected the depth of interest shown by the individual Town Committee Members.

George Jessop of Barnstable observed that the proposed dwelling was the smallest in the immediate neighborhood and that it appeared to be properly located on the lot. He agreed with Mr. Collins that the deliberations of the Dennis Town Committee appeared to have been thorough and not arbitrary, capricious or erroneous. He indicated that the record indicated a diligent review of the project and a reasonable determination by the Town Committee.

Acting Chairman Houghton stated that he concurred with his fellow Commissioners and that the Dennis Town Committee did follow due diligence in acting on the application.

Mr. Jessop moved, seconded by Mr. Collins, to affirm the decision of the Dennis Town Committee in their decision to issue a Certificate of Appropriateness for the proposed dwelling to be located at 9 Mark Way, Dennis, Massachusetts.

The motion carried by a vote of 3-0-1. (Jessop Collins & Houghton in favor and Lomenzo abstaining)

The Commission findings:

The Commission found as follows:

The Dennis Town Committee did not exceed its authority in granting a Certificate of Appropriateness for a new dwelling to be located at 9 Mark Way, Dennis, Massachusetts.

The Dennis Town Committee did not exercise poor judgment in granting a Certificate of Appropriateness for a new dwelling to be located at 9 Mark Way, Dennis, Massachusetts.

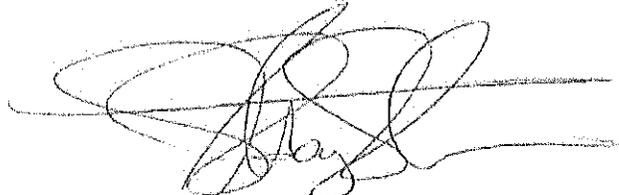
The Dennis Town Committee did not act in an arbitrary, capricious or erroneous manner in granting a Certificate of Appropriateness for the proposed dwelling to be located at 9 Mark Way, Dennis, Massachusetts.

The Dennis Town Committee decision of July 27, 2011, to issue a Certificate of Appropriateness to the Applicant should be upheld.

Commission's Determination:

As to Appeal #2011-8, the Decision of the Dennis Town Committee in granting a Certificate of Appropriateness for a new dwelling to be located at 9 Mark Way, Dennis, Massachusetts is affirmed. (3-0-1).

Any person aggrieved by this decision has a right to appeal to the District Court Department, Orleans Division, within 20 days of the filing of this decision with the Dennis Town Clerk.



Lawrence Houghton., Acting Chairperson

Dated: September 30, 2011